

(2015) 08 AHC CK 0118
In the Allahabad High Court
Case No : Writ B. No. 47545 of 2015

Dhanpal Yadav and Others

APPELLANT

Vs

Shiv Narain Pandey and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

Citation : (2015) 129 RD 237

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Ashwani Kumar Yadav and Sudhir Kumar Chandraul, for the Appellant; R.C. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Sudhir Kumar Chandraul for the petitioners. This writ petition has been filed against the order of Additional Commissioner dated 12.10.2001, by which the appeal filed against the order of SDO dated 5.6.2000, has been allowed and the order dated 5.6.2000 and decree passed on the basis of compromise dated 27.6.1975, were set aside and the suit has been restored to its original number and the Trial Court has been directed to try the suit after hearing the parties and the order of Board of Revenue dated 28.11.2013 dismissing the revision of the petitioners against the aforesaid order and order dated 13.5.2015 rejecting the recall application of the petitioners.

2. The dispute relates to plot No. 2/70 (area 1.31 acre) of village Shivpur Diyar, Sumali, pargana and district Ballia. The petitioners filed a suit on 11.6.1975 under section 229-B of U.P. Act No. 1 of 1951 for declaring them as bhumidhars of the land in dispute and a compromise was filed on 27.6.1975. In terms of the compromise, the suit was decided by the SDO by order dated 27.6.1975. Thereafter, the contesting respondent Shiv Narain Pandey filed an application dated 27.2.1999 for setting aside the compromise decree dated 27.6.1975.

3. It has been stated by the respondents that no summon of the suit was issued to him, rather, a fabricated compromise was filed and on its basis, the suit was decreed. When the village was placed under survey and record operation, then he came to know about the compromise decree dated 27.6.1975 and filed the application for setting aside the decree along with a delay condonation application. The SDO after hearing the parties, by order dated 9.6.2000, held that although survey and record operation in the village was started in the year 1995, but the application for setting aside the compromise decree was filed on 27.2.1999, as such, there is no explanation of delay during this period. Accordingly, the delay in filing the application for setting aside the compromise decree was not liable to be condoned. On this finding, he rejected the delay condonation application as well as dismissed the application for setting aside the compromise decree as time barred.

4. Shiv Narain Pandey filed an appeal from the order dated 5.6.2000, which was heard by Commissioner, who by order dated 12.10.2001 found that no summon in the suit was issued to the defendant. The suit was filed on 11.6.1975 and decided on the basis of compromise on 27.6.1975. The defendant has denied filing of the compromise. Thus, in such circumstances, the defendant had no knowledge either of the suit, or the compromise and the delay was liable to be condoned, but the Trial Court has illegally rejected the delay condonation application. On these findings, he allowed the appeal and set aside the order of the Trial Court dated 5.6.2000 as well as compromise decree dated 27.6.1975. The petitioner filed a revision against the aforesaid order before the Board of Revenue. It is alleged that some of the revisionists died during pendency of the revision and substitution applications have been filed. The opposite parties have also died and the substitution applications have been filed for substituting their heirs, along with delay condonation applications. Before the Board of Revenue, various dates were fixed for hearing of the revision and all of a sudden, the Board of Revenue by the order dated 28.11.2013, decided the revision, without hearing the arguments as well as without allowing any of the substitution applications. The petitioner filed an application for recall of the order dated 28.11.2013, which has been rejected by Board of Revenue by the order dated 13.2.2015. Hence, this writ petition has been filed.

5. The Counsel for the petitioner submits that the procedure adopted by Board of Revenue was unfair, inasmuch as, the revision was adjourned on various dates fixed by Board of Revenue. On 9.7.2013, 10.9.2013 was the date fixed before the Board of Revenue for hearing and on 10.9.2013, 13.9.2013 was the date fixed and notices have been issued. Thereafter, 28.10.2013 was the date fixed and thereafter, nothing was done and the Board of Revenue has decided the revision by the order dated 28.11.2013. Thus, the hearing in the revision was not done at all and the Board of Revenue has decided the revision without hearing the parties. In any case, the substitution applications were pending. Some of the revisionists have also died and their heirs were also not brought on record, but the revision has been decided. In such circumstances, the petitioner filed an

application for recall of the order dated 28.11.2013, but the Board of Revenue has rejected the recall application. He submits that so far as the application for setting aside the compromise decree filed by the respondents is concerned, the decree was based upon the compromise and the recall application was not maintainable. In the recall application, the respondents could not adduce any evidence to show that the compromise and vakalatnama filed in the suit, did not bear his signatures. The date of information is alleged on the basis of survey and record operation in the village, which has been started in the year 1995, but the application was filed on 27.2.1992 and there was no explanation of delay during this period, as such, the Trial Court had rightly rejected the delay condonation application, as there being no explanation at all of the delay during 1995 to 27.2.1999. The Commissioner has illegally allowed the appeal. He has not only set aside the order passed by the Trial Court dated 5.6.2000, but he has also set aside the compromise decree dated 27.6.1975. The order of Commissioner is illegal and was liable to be set aside in the revision, but the revision has been dismissed, without hearing the arguments on it.

6. I have considered the arguments of Counsel for the petitioners and examined the record. A perusal of the application for setting aside the compromise decree shows that the defendant had alleged that in the suit, the summons were not issued to him and he had not appeared before the Court, nor filed any vakalatnama or compromise. He has alleged that the compromise has been filed through some imposter. The petitioner appeared before the Court below and filed his objection in the application for setting aside the compromise decree. On the denial of the signature on the vakalatnama as well as compromise, the burden was shifted upon the petitioner to prove that the compromise as well as vakalatnama was genuine and has been signed by the respondents, but no evidence has been adduced in this respect. Thus, the Commissioner has rightly set aside the compromise as the signatures on the vakalatnama and compromise, have been denied by the respondents. The Commissioner further remarked that the suit was filed on 11.6.1975, summons were not issued by the Trial Court and the suit was decided on 27.6.1975. Thus, genuineness of the proceeding taken by the Trial Court has been doubted by the Commissioner and the finding recorded in this respect does not suffer from any illegality. So far as the delay is concerned, the arguments of Counsel for the petitioner as well as the objection of the petitioner before the Trial Court was that the survey and record operation was started in the year 1995 and the application for setting aside the compromise decree was filed on 27.2.1999. The start of survey and record operation is immaterial. It is only when the substantive measures have been taken and the defendant was given notice of the proceeding, then he inspected the record and came to know about the fraudulent decree and in such circumstances, the Commissioner has rightly condoned the delay as there is nothing on the record to show that prior to filing the application for setting aside the compromise decree, the respondents had knowledge of the compromise decree. In such circumstances, the revision had no merit. Although, some of the

revisionists were dead, but their heirs have filed substitution applications along with vakalatnama and the Counsel appearing for the revisionist had full authority of arguing the revision. Thus, the revision was dismissed and on this ground, the order is not liable to be interfered by this Court in exercise of its writ jurisdiction. In such circumstances, the Counsel for the revisionist took the chance to argue the case on merit. Now, he cannot be permitted to say that some of the revisionists were dead and the argument raised on their behalf was of no effect. The entire conduct of the petitioners show that they had fraudulently obtained the compromise decree in the year 1975. The decree has been set aside by the order dated 12.10.2001 and now they want to delay the hearing of the suit and no interference is required by this Court. The writ petition has no merit and is dismissed.